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No. 253

In the Supreme Court of the United States

OCTOBER TERM, 1939

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 876

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit, entered on June 28, 1939, setting aside a second direction of election issued by the Board ordering a run-off election in the case entitled "*In the Matter of Consumers Power Company and International Brotherhood of Electrical Workers, Local 876,*" 11 N. L. R. B., No. 63, March 1, 1939.

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 52–56) is not yet reported. The "Decision and

Direction of Election" (R. 36–44) issued by the Board on November 8, 1938, is reported in 9 N. L. R. B. 742, and the "Supplemental Decision and Second Direction of Election" (R. 21–25), issued by the Board on March 1, 1939, is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 28, 1939 (R. 51). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether a direction of election issued by the National Labor Relations Board in a proceeding under Section 9 (c) of the National Labor Relations Act is reviewable by a circuit court of appeals under Section 10 (f) of the Act.

2. If the answer to the first question is in the affirmative, there is presented the question whether, after an election in which two competing labor organizations were placed on the ballot and a place was also provided for the employees to vote against representation by either of said organizations, in which election neither of the competing organizations obtained a majority of the votes cast, it is an abuse of discretion for the Board to conduct a run-off election in which the name of the organization receiving the smaller number of votes in the first election is dropped from the ballot, so that the employees may vote for or against the organization

receiving the greater number of votes in the first election.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (49 Stat. 449, U. S. C. Supp. IV, Title 29, Section 151 *et seq.*) are set forth in the Appendix, *infra*, pp. 21–28.

STATEMENT

On February 2, 1938, the International Brotherhood of Electrical Workers, Local 876 (I. B. E. W.), respondent here, filed with the Regional Director of the Board at Detroit, Michigan, a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Consumers Power Company, Jackson, Michigan (hereinafter called the Company), and requesting an investigation and certification of representatives for collective bargaining pursuant to Section 9 (c) of the Act. The Board, on August 12, 1938, authorized the Regional Director to conduct an investigation and to provide for an appropriate hearing upon notice. Pursuant to notice, a hearing was held on August 29 and 30 at Detroit, Michigan, before a Trial Examiner. Both the I. B. E. W. and th Utility Workers Organizing Committee (U. W. O. C.), which also claimed to represent employees of the Company, were represented by counsel and participated in the hearing. On November 8, 1938, after opportunity for oral argument before the

Board (R. 37), of which the parties did not avail themselves, the Board issued a Decision and Direction of Election (R. 36–44). The Board found that a question affecting commerce had arisen concerning the representation of the Company's employees, and pursuant to the authorization contained in Section 9 (c) of the Act so to do, directed that as part of the investigation an election by secret ballot should be conducted under the direction and supervision of the Regional Director to determine whether the Company's employees, with certain exceptions not here relevant, desired to be represented by the I. B. E. W., by the U. W. O. C., or by neither of said organizations (R. 44).

Thereafter, from January 10 to January 13, 1939, the Regional Director conducted such election by secret ballot, as required by the Board's Direction of Election and amendments (R. 45–49) thereto. On January 21, 1939, the Regional Director served on the parties his Intermediate Report on the conduct of the ballot. No exceptions to the Intermediate Report were filed (R. 22). The Report showed the results of the secret ballot to be as follows (R. 5, 22):

Total Number of Employees Eligible	2,977
Total Number of Ballots Cast	2,806
Total Number of Votes for I. B. E. W.	1,072
Total Number of Votes for U. W. O. C.	1,164
Total Number of Votes for Neither	506
Total Number of Challenged Ballots	52
Total Number of Blank Ballots	1
Total Number of Void Ballots	11

Upon the expiration of the period for filing exceptions to the Intermediate Report, the Regional Director forwarded it to the Board in Washington. Thereafter, by letter dated January 31, 1939, the chairman of the U. W. O. C. requested that the Board certify the U. W. O. C. as representative of the employees (R. 22–23). By letter dated February 4, 1939, the Secretary of the Board replied that such certification would not be in accordance with the principle established by the Board that no representative is certified which has not received a majority of the votes cast in an election (R. 23). By letters dated February 2, 1939, and February 6, 1939, counsel for the U. W. O. C. and the chairman thereof requested the Board to direct the holding of a run-off election providing for a choice for or against the U. W. O. C., which had received a plurality of the votes in the January election (R. 23). The Secretary of the Board, by letters dated February 8, 1939, notified the parties that the Board would direct the holding of a run-off election unless objection was received within five days (R. 23, 5). By letter dated February 11, 1939, counsel for the I. B. E. W. informed the Board that it had no objection to the holding of a run-off election in which the I. B. E. W. would be included on the ballot, but that it did object to the holding of any run-off election in which that organization's name would not be included, and requested oral argument before the Board concerning its right to

appear on the ballot (R. 23, 17–19). The latter request was granted and oral argument was had before the Board on February 24, 1939, by counsel for the I. B. E. W. and counsel for the U. W. O. C. (R. 23, 8).

On March 1, 1939, the Board issued its Supplemental Decision and Second Direction of Election, now sought to be reviewed (R. 21–25). In this decision the Board stated (R. 23–24):

> In *Matter of Interlake Iron Corporation* and *Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local No. 1657*, 4 N. L. R. B. 55, the Board, in reaffirming its policy of providing a space on the ballot, in elections involving two or more rival unions, in which a voter may indicate that he does not desire either of the named unions to represent him, stated that, "In the event that the election in the present case results in none of the three preferences obtaining a majority of the votes cast, we will, upon request of the labor organization receiving the greater number of votes, promptly direct a run-off election in which the ballot will allow employees the opportunity to vote for or against this organization." This policy has, since its formulation, been consistently followed by the Board. We have considered the questions raised in the I. B. E. W. letter of February 11, 1939, and the considerations advanced by counsel for I. B. E. W. at the oral argument, and find no

reason to depart from our established practice in cases of this kind.

A majority of the employees of the Company in the appropriate unit have indicated a desire to bargain collectively with the Company, although they have accorded neither of the rival unions a majority. As noted above, U. W. O. C., which received the greater number of votes validly cast in the election, has requested the holding of a run-off election. The Board finds that the question concerning representation which has arisen can best be resolved by the holding of a run-off election in which the employees in the appropriate unit will be given the opportunity to decide whether or not they desire to be represented by U. W. O. C. We will so direct. * * *

The Board accordingly directed that a run-off election by secret ballot should be conducted within forty-five days, under the supervision of the Regional Director, to determine whether or not the employees desired to be represented by the U. W. O. C. (R. 24–25). On March 15, 1939, the Board directed that the run-off election be conducted on April 11, 12, 13, and 14, 1939 (R. 27, 29).

On April 5, 1939, the I. B. E. W. filed its petition in the court below to review and set aside the Board's Supplemental Decision and Second Direction of Election (R. 1–17). It also applied for a stay pending a determination of its peti-

tion for review (R. 27–31). On April 10, 1939, the Board filed its opposition to the application for a stay (R. 31–32) and a motion to dismiss the petition for review for lack of jurisdiction (R. 32–35). After oral argument, the court, on April 10, 1939, granted the I. B. E. W.'s application for a stay of the election pending the hearing and determination of its petition for review (R. 50). On May 10, 1939, the case was heard by the court on the Board's motion to dismiss, but the merits of the case were also briefed and argued (R. 51). On June 28, 1939, the court handed down its decision, in which it held that it had jurisdiction to review the Board's Supplemental Decision and Second Direction of Election and, on review thereof, held that the Board had acted unlawfully in excluding the I. B. E. W. from the run-off ballot (R. 52–56). The court ordered that the "order complained of be * * * set aside" (R. 56, 51).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that it had jurisdiction to review the Board's proceedings in this case.

2. In holding that the Board had acted unlawfully in directing that the name of respondents not be included on the ballot in the run-off election.

3. In setting aside the Board's Supplemental Decision and Second Direction of Election.

REASONS FOR GRANTING THE WRIT

I

The decision of the court below sustaining its jurisdiction in this case is in conflict with the decisions of other courts of appeals. The question was directly presented in *Unlicensed Employees of Sabine Transportation Co.* v. *National Labor Relations Board,* decided November 12, 1937 (C. C. A. 5th) (reported in C. C. H., Labor Law Service, p. 16,040), in which the Board's motion to dismiss the petition for lack of jurisdiction was granted without opinion.[1] The decision is also in conflict with the holding in *Cupples Co., Manuf'rs* v. *National Labor Relations Board,* 103 F. (2d) 953, 955 (C. C. A. 8th), that the direction of election there involved was not reviewable under Section 10 (f). There is also a conflict with the decision of the Court of Appeals for the District of Columbia in *American Federation of Labor* v. *National Labor Relations Board,* 103 F. (2d) 933, pending on petition for writ of certiorari, No. 70, October Term, 1939, and with the decision of the Circuit Court of Appeals for the Third Circuit in *United Employees Association* v. *National Labor Relations Board,* 96 F. (2d) 875 (C. C. A. 3d). In

[1] The decision is also contrary to that reached by the court below in a previous case, *Combustion Engineering Co.* v. *National Labor Relations Board,* 95 F. (2d) 996. There a motion by the Board to dismiss for lack of jurisdiction a petition similar to the present one, was granted without opinion.

each of these cases the court held that the courts of appeals are without jurisdiction under the Act to review certifications issued by the National Labor Relations Board. If a certification—the final step in a representation proceeding—is not reviewable, a direction of election, which is a preliminary instruction by the Board to its own subordinate officials to take certain proceedings as part of the investigation concerning representation, *a fortiori*, is not reviewable.

II

The question involved is one of great importance in the administration of the National Labor Relations Act. A large proportion of the matters presented to the Board are questions concerning representation arising under Section 9 (c) of the Act.[2] If the decision below is correct, undoubtedly numerous suits will be instituted to review directions of the Board in representation cases, and the ultimate decision in such cases will inevitably be delayed for long periods of time. If the decision below is incorrect, and is reversed, this will not occur, and the vital controversies concerning representation may be disposed of without such delays.

We believe that the decision below on the question of jurisdiction is contrary to the terms of the

[2] In the year covered by the Board's most recent annual report, the Board ordered elections in 258 cases and issued a total of 342 certifications. *Third Annual Report of the National Labor Relations Board*, p. 40.

Act. The memorandum filed by the Government in *American Federation of Labor* v. *National Labor Relations Board*, No. 70, *supra*, contains an analysis of the provisions of the statute. We respectfully refer the Court to that analysis. We there point out that the jurisdiction of the circuit courts of appeals to review orders of the Board rests entirely upon Section 10 (f) of the Act and is limited to "orders" which are "final" and which are made solely in proceedings relating to unfair labor practices. The argument applies here even more clearly. A direction of election such as that involved in this case possesses none of the requisites of orders reviewable by the circuit courts of appeals under the statutory provisions governing review. It is not an order either in form or substance, but is a direction that, as part of the investigation concerning representation authorized by the Board, an election by secret ballot be conducted under the supervision of the Board's Regional Director.[2] If regarded as an order, within the meaning of the statute, which we think it is not, it is plainly interlocutory and not final, since no legal

[2] The Second Direction of Election, insofar as is pertinent here, reads as follows (R. 24–25):

"By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

"DIRECTED that, as part of the investigation authorized by the Board to determine representatives for the purposes of

consequences could ensue prior to the election, certification, and further order entered in an unfair labor practice proceeding. Thus, an attempt to review the Second Direction of Election in this case is more premature by two steps than the effort to review a certification rejected in the *American Federation of Labor* and *United Employees Association* cases, *supra*, pp. 8–9.

The legislative history referred to in the memorandum for the Government in the *American Federation of Labor* case shows that Congress, in enacting Sections 9 (d) and 10 (f), was particularly desirous of avoiding review of Board decisions in representation cases prior to the holding of an election. The immediate legislative predecessor of the National Labor Relations Act was Public Resolution No. 44, 73d Cong., 2d Sess. (48 Stat. 1183, approved June 19, 1934). Under that Resolution, the old National Labor Relations Board was em-

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collective bargaining with Consumers Power Company, Jackson, Michigan, an election by secret ballot shall be conducted within forty-five (45) days from the date of this Direction, under the direction and supervision of the Regional Director for the Seventh Region, acting in this matter as agent of the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among all the employees of the Company, * * *, who were on the pay roll of the Company for the pay-roll period next preceding August 29, 1938, except those who have since quit or been discharged for cause, to determine whether or not they desire to be represented by Utility Workers Organizing Committee, for the purposes of collective bargaining."

powered to hold elections, and orders issued by the Board were expressly made reviewable in the circuit courts of appeals. The manner in which this provision operated to render the Resolution ineffective is described in the report of the House committee recommending the passage of the National Labor Relations Act (H. Rept. 1147, 74th Cong. 1st Sess., pp. 6–7):

> The weakness of this procedure is that under the provision for review of election orders employers have a means of holding up the election for months by an application to the circuit court of appeals. Thus, in the *Firestone* and *Goodrich cases*, where the Board ordered elections in November 1934, the cases were not argued in the circuit court of appeals until April; decisions have not yet been rendered, and if the decisions happen to be favorable to the Board, the companies will undoubtedly appeal to the Supreme Court, with further inevitable delay. At the present time 10 cases for review of the Board's election orders are pending in the circuit courts of appeals. Only three have been argued and none have been decided.
>
> *The election is but a preliminary determination of fact, and there is no reason why employers should have an opportunity for court review prior to the holding of the election.* The ability of employers to block elections has been productive of a large measure of industrial strife. When an employee organization has built up its membership to

> a point where it is entitled to be recognized as the representative of the employees for collective bargaining, and the employer refuses to accord such recognition, the union, unless an election can promptly be held to determine the choice of representation, runs the risk of impairment of strength by attrition and delay while the case is dragging on through the courts, or else is forced to call a strike to achieve recognition by its own economic power. Such strikes have been called when election orders of the National Labor Relations Board have been held up by court review.
>
> In the *Firestone* and *Goodrich cases,* strikes were imminently threatened, and were only averted at the last minute by appeals to the men to await the decisions of the court on the election orders. * * * [Italics supplied.]

The report of the Senate Commission on Education and Labor, S. Rept. 573, 74th Cong., 1st Sess., pp. 5–6, declares that:

> Under Public Resolution 44, any attempt by the Government to conduct an election of representatives may be contested *ab initio* in the courts, although such election is in reality merely a preliminary determination of fact. This means that the Government can be delayed indefinitely before it takes the first step toward industrial peace. After almost a year not a single case, in which a company has chosen to contest an election

order of the Board, has reached decision in any circuit court of appeals.

The committee reports make it plain that Congress intended to remedy this weakness in Public Resolution No. 44. The Senate Report (p. 14) declares that:

> *Section 9 (d) makes it absolutely clear that there shall be no right to court review anterior to the holding of an election. An election is the mere determination of a preliminary fact, and in itself has no substantial effect upon the rights of either employers or employees. There is no more reason for court review prior to an election than for court review prior to a hearing.* But if subsequently the Board makes an order predicated upon the election, such as an order to bargain collectively with elected representatives, then the entire election procedure becomes part of the record upon which the order of the Board is based, and is fully reviewable by any aggrieved party in the Federal courts in the manner provided in section 10. And this review would include within its scope the action of the Board in determining the appropriate unit for purposes of the election. This provides a complete guarantee against arbitrary action by the Board. [Italics supplied.]

The House Report similarly states (p. 23):

> As previously stated in this report, the efficacy of Public Resolution 44 has been substantially impaired by the provision for

court review of election orders prior to the holding of the election. *Section 9 (d) of the bill makes clear that there is to be no court review prior to the holding of the election,* and provides an exclusive, complete, and adequate remedy whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an election or other investigation pursuant to section 9 (c). The hearing required to be held in any such investigation provides an appropriate safeguard and opportunity to be heard. Since the certification and the record of the investigation are required to be included in the transcript of the entire record filed pursuant to section 10 (e) or (f), the Board's actions and determinations of fact and law in regard thereto will be subject to the same court review as is provided for its other determinations under sections 10 (b) and 10 (c). [Italics supplied.]

The position adopted by the court below would bring on the very consequences which Congress deliberately and in the light of past experience sought to avoid when it drafted the National Labor Relations Act. The court below was accordingly without jurisdiction of the cause.

III

The question as to the manner in which the Board should conduct a run-off election is also important. If the court below had jurisdiction to review the Board's Supplemental Decision and

Second Direction of Election, it is submitted that the court's decision on the merits is erroneous and should be reversed.

The practice of the Board in cases in which two organizations appear on the ballot, along with a place for the "neither" vote, and in which neither organization has received a majority of the votes cast in an election, has been to hold a run-off election, if requested by the union receiving a plurality, in which the employees may vote for or against representation by the organization obtaining a plurality.* The reason for this procedure is stated in the Board's decision in *In the Matter of Inter-*

* *In the Matter of Milwaukee Publishing Co.*, 10 N. L. R. B., No. 29, 11 N. L. R. B., No. 69, 12 N. L. R. B., No. 7 (decided April 3, 1939); *In the Matter of Shell Oil Co.*, 7 N. L. R. B. 417, 8 N. L. R. B. 920, 9 N. L. R. B. 908, 10 N. L. R. B., No. 119 (decided January 21, 1939); *In the Matter of Tidewater Associated Oil*, 5 N. L. R. B. 982, 8 N. L. R. B. 829, 9 N. L. R. B., 821; *In the Matter of Unit Cast Corp.*, 7 N. L. R. B. 129, 8 N. L. R. B. 831, 833; *In the Matter of J. J. Little & Ives Co.*, 6 N. L. R. B. 411, 7 N. L. R. B. 12; *In the Matter of Fedders Mfg. Co.*, 3 N. L. R. B. 818, 4 N. L. R. B. 770, 5 N. L. R. B. 269, 7 N L. R. B. 817; *In the Matter of Zellerbach Paper Co.*, 4 N. L. R. B. 348, 5 N. L. R. B. 308; *In the Matter of Elliott Bay Lumber Co.*, 8 N. L. R. B. 753, 9 N. L. R. B. 3, 6; *In the Matter of Shell Petroleum Corp.*, 9 N. L. R. B. 831, 10 N. L. R. B., No. 101, 11 N. L. R. B., No. 47 (decided February 21, 1939); *In the Matter of Utah Copper Co.*, 7 N. L. R. B. 928, 8 N. L. R. B. 968; 9 N. L. R. B. 775; *In the Matter of Oceanic Stevedoring Co.*, 8 N. L. R. B. 1325, 9 N. L. R. B. 72, 74, 10 N. L. R. B., No. 52 (decided December 15, 1938); *In the Matter of Bemis Bros. Bag Co.*, 10 N. L. R. B., No. 24, 24a, 11 N. L. R. B., No. 96 (decided March 10, 1939); *In the Matter of Kingan & Co.*, 13 N. L. R. B., No. 86 (decided July 20, 1939).

lake Iron Corporation, 4 N. L. R. B. 55, 61, as follows:

> The Act, however, does not require an unwilling majority of employees to bargain through representatives. It merely guarantees and protects that right of a majority if it chooses to exercise it. Yet if the opportunity of voting against the organizations named on the ballot were denied, a majority might be forced against its will to accept representation by one or other of the nominees. The policy adopted by the Board is designed merely to make sure that the votes recorded for a particular representative express a free choice rather than a choice in default of the possibility of expressing disapproval of both or all proposed representatives.

In accordance with these principles, a majority of the employees in the instant case, including both proponents of I. B. E. W. and persons opposing representation by either organization, have the opportunity to vote that they do not desire representation by U. W. O. C. If they do so vote, the U. W. O. C. will not be certified. If the I. B. E. W. were then of the opinion that a majority of the employees might vote for it, the regular procedure of the statute is still available to it in a later representation case This procedure is entirely fair, is consistent with the policy of the Act, and clearly is not unreasonable or arbitrary.

The decision of the court below requires the Board to place the two contesting organizations on the run-off ballot and prevents any expression of opinion by employees opposed to both. The latter would be compelled to vote for one or the other organization, or else not vote at all. In its administrative judgment and discretion the Board was entitled to consider such a procedure inadvisable in that it forced a vote, if one were to vote at all, for representatives who may not be desired.

In view of the above considerations, we submit that the procedure adopted by the Board conforms to the policy of the statute, and that the court was entirely without warrant in substituting for the Board's reasonable exercise of discretion its own judgment as to the manner in which the run-off election should be held. It may be that some form of ballot other than that used by the Board in the conduct of run-off elections in this and other cases may not be inconsistent with the policies of the Act. It may be also that the Board, in the light of further experience, may decide to adopt a different form of ballot, or, indeed, may conclude that run-off elections should not be held at all. The point is, however, that the Board's judgment and experience thus far have persuaded it that run-off elections and the form of ballot used in the present case properly aid in carrying out the policies of the statute, and that this determination is based upon reasonable grounds. The court below was not war-

ranted in setting aside the Board's Supplemental Decision and Direction of Election as arbitrary merely because it disagreed with the Board as to which form of ballot is best.

CONCLUSION

The questions presented by this case are of general importance. The decision on the jurisdictional question is not only important *per se*, but also conflicts with decisions in other courts of appeals and is contrary to the terms of the Act. The decision on the merits is also erroneous. For these reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

GOLDEN W. BELL,
Acting Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

JULY 1939.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. IV, Title 29, Sec. 151 *et seq.*) are as follows:

> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> (2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in

this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation

of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain [1] such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c), is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

[1] So in original.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person

an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the

pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its

original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying,

and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

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